

Topsfield Conservation Commission

Minutes of September 26, 2007

Proctor School Library

Present: Walter Harmer, Chair; Ralph Stump; John Olcott; Thomas Warren; Wade Goldman; John McArdle (at 9:02 p.m. during the hearing for 14 Arrowhead Road); Lana Spillman, Conservation Administrator; Catherine Tinsley, Secretary

Absent: None

7:00pm - Harmer opened the meeting.

MEETING MINUTES:

Stump made a motion to approve the minutes of **August 22, 2007** as amended. Seconded. MOTION CARRIED unanimously.

HEARINGS:

Continuation NoI 307-0587: 417 Boston Street, (Map 12, Lot 32) Surrey Development

Corporation/Neve-Morin Group, Inc. Written request received 9/24/07 to continue to 10/24/07

Stump made a motion to continue the hearing under the Act and the Bylaw at the written request of the Applicant's representative to October 10, 2007. Seconded. MOTION CARRIED unanimously.

Continuation NoI 307-0594: 116 Boston Street, (Map 69, Lot 13) Cheever Realty Trust/Hayes Engineering (Gordie Rogerson).

Continuation from last meeting: The TCC site visit was August 29th. Rogerson was asked to re-flag the line nearest the proposed septic leaching system using Topsfield criteria. The revised plan was submitted to the TCC office on October 23rd.

Stump made a motion to accept the revised plan, waiving the seven-day-prior policy, but not to make a final decision at this time. Seconded. MOTION CARRIED unanimously.

A site visit was set up for October 4, 2007 to review the revised wetland flags. It was observed that the spot elevations on the revised plan do not make sense with the lines drawn on the plans. It was also noted that the calculated square footage of the wetland appears to be in error.

Goldman made a motion to continue the hearing to October 10th under the Act and the Bylaw in order to have the second site visit. Seconded. MOTION CARRIED unanimously.

Continuation NoI 307-0597: 49 Rowley Road, (Map 6, Lot 13) Jensen Development Corp./Hancock Associates

Spillman reported that the DEP comment sheet with file number arrived on September 17th and identified the comment, "Applicant should try to move driveway farther away from the wetland. Drainage from driveway should not be allowed to flow towards vernal pool." A revised plan was submitted to TCC September 5th. The Interceptor drain is designed for the entire length of the driveway.

Stump made a motion to close the hearing and a motion to issue an Order of Conditions with Special Conditions as discussed, under the Act and the Bylaw. Seconded. One Abstention (Goldman, who was not present on previous hearing dates). MOTION CARRIED by majority vote.

Continuation ANRAD 307-0597: 12 Boston Street, (Map 81, Lot 1) Alan Berry/Beals Associates, Inc.

Spillman reported that the first site visit was September 14th. DEP comment sheet with file number arrived today with no comments. A second site visit is scheduled for October 1st at 5:00 p.m.

Stump made a motion to continue the hearing at the written request of the Applicant's representative to October 10th in order to have the second site visit. Seconded. MOTION CARRIED unanimously.

ANRAD 307-____: 95 Wenham Road, (Map 71, Lot1) Peter Herbert/Wetlands and Land Management, Inc.

Bill Manuell of Wetlands and Land Management was present to represent and submitted proof of abutter notification. Stump read the legal ad. The request is for TCC to verify resource area boundaries on the property.

An initial walk through was made by the Administrator with Manuell on September 17th. Harmer noted that there is Riverfront area to Wheel Brook; the MAHW and Riverfront Area should be shown on the plan. TCC will make a site visit on 10/9/07 at 5 pm.

Stump made a motion to continue the hearing for 95 Wenham Road under the Act and the Bylaw to October 10th in order to have a second site visit and to receive the DEP comment sheet with file number. Seconded. MOTION CARRIED unanimously.

NoI 307-____: 11 Gail Street, (Map 40, Lot 44) Richard Little/Wetlands and Land Management, Inc.

Stump read the legal ad. Bill Manuell of Wetlands and Land Management was present to represent and submitted proof of abutter notification. This is a proposal to replace a septic system in Buffer Zone. The wetlands flags need to be reviewed. Mr. Manuell stressed to the Commission that there is very little space on the property to place the system; the (BOH-approved) leach field is proposed 92 feet away from wetlands. The wetlands are off the site; permission was not granted by adjacent homeowners to flag the wetland and Manuell's delineation was by observation only.

Stump made a motion to continue the hearing under the Act and the Bylaw to October 10th in order to have a site visit and to receive the DEP comment sheet with file number. Seconded. MOTION CARRIED unanimously.

Continuation AbNoI 307-0598: 47 Rowley Road, (Map 6, Lot 14) Carl and Beverly Nelson

TCC requested a revised plan showing proposal to move the shed to the north, beside the driveway, etc. Spillman identified that the revised plan and cover letter were received this morning.

Stump made a motion to accept the plans and cover letter and allow discussion and to waive the 7-day policy and that no action be taken until the next meeting. Seconded. MOTION CARRIED unanimously.

Mr. Nelson reviewed the revised plan and the previous request from the TCC for infiltration trenches around new addition, along the driveway, and noted a new position of the shed (approximately 60 feet from the wetland). Noting that the engineer's stamp was dated 1999, the Commission asked Mr. Nelson to list the four changes directly on the plans and to date and sign the plan. Mr. Nelson so modified the 1999 Hancock Associates plan; the date and engineer's stamp remain on the plan.

Stump made a motion to continue the hearing to October 10, 2007. Seconded. MOTION CARRIED unanimously.

NoI 307-____: 221 Washington Street, (Map 47, Lot 2), Andrzej Galka

It was noted that some DEP comments were made online but that the TCC office has not received a hard copy. Spillman noted the DEP comment on the website says, "Plans not adequate for review. Applicant needs to provide narrative to how project meets performance standards under 10.58(4)." This means that the requirements for work in Riverfront Area need to be met, including that an Alternatives Analysis is needed. It was noted that the owner was not required to be present at this meeting. The Chair will contact the homeowner directly. Commissioners were to visit the site on their own.

Stump made a motion to continue the hearing under the Act and the Bylaw to October 10th in order to receive additional information, including the DEP comment sheet with file number. Seconded. MOTION CARRIED unanimously.

NoI 307-0599: 86 Salem Road, (Map 64, Lot 16), MIT Real Estate Foundation, Inc./Seekamp Environmental Consulting, Inc.

Spillman identified that this is a request for an extension to the Emergency Certification that was issued on September 20th, extending the time limit to October 20th. 310 CMR allows for such extended time (total

of 60 days) for Immediate Response Actions approved by the Bureau of Waste Site Cleanup, which is the case here. The Commissioners who made a site visit had no concerns.

Stump made a motion to close the hearing and a motion to issue an Order of Conditions with Special Conditions as discussed, under the Act and the Bylaw. Seconded. MOTION CARRIED unanimously.

NoI 307-____: 78 South Main Street, (Map 49, Lot 25) Anthony Bloxham/Mill River Consulting

The proposal is to replace a failed septic system within Buffer Zone and Riverfront Area.

Spillman noted that the tight tank installation was approved by the BOH. It was identified that this is the best location on the property. Spillman noted that the TCC office has not received a DEP number to date.

Stump made a motion to continue the hearing under the Act and the Bylaw to October 10, 2007, in order to receive the DEP comment sheet with file number. Seconded. MOTION CARRIED unanimously.

NoI 307-____: 94 South Main Street, (Map 49, Lot 27) Timothy and Emily Collins/Meridian Associates, Inc.

Mr. Stump read the Legal Ad. April Ferraro of Meridian Associates submitted proof of abutter notification. Mr. Collins was present, as was Will Thompson of Energy Solutions, North Andover. It was identified that the Collins' proposal is to install solar panels and an electrical conduit in Buffer Zone Resource Area and Riverfront Area of Cleaveland Brook. Ferraro stated that the solar panels would be ground mounted. Photos of the panels facing south were referred to and provided to the Commission by Meridian. Ferraro noted that this is a temporary disturbance, and no mature vegetation will be removed for the installation. She went on to say that the panels come with footings attached and go into the ground 40 inches, a mechanical auger will be used, 12 footings per section, 480 ft of conduit. Mr. Thompson identified that the area underneath the proposed panels would be mulched. The Commissioners responded that low growing habitat for critters should be used, i.e. bayberry, blueberry, etc. Stakes will mark the area. Thompson explained that the location, which is within the Buffer Zone, was chosen to avoid the shade of trees and possible damage from falling limbs. He identified that the panels produce 17,000 KW per year. He also said that glare would not be a problem for the abutters. Spillman suggested that Commissioners make a site visit. The homeowner gave permission for the TCC to be on the property.

Stump made a motion to continue the hearing for 94 South Main Street under the Act and the Bylaw to October 10th in order to have a site visit and to receive the DEP comment sheet with file number. Seconded. MOTION CARRIED unanimously.

NoI 307-____: 240 Rowley Bridge Road, (Map 80, Lot 9) Joan Dyer/Hancock Associates

Stump Read the Legal Ad. John Dick of Hancock Associates submitted proof of abutter notification.

The proposal is to install a drainage system to drain water from the driveway and garage area to the BVW (containing an Intermittent Stream) at the rear of the property. The homeowner, Joan Dyer, was present. Dick identified that in 1985 a garage was built on the north side of the house. The low point is in front of the house and rainwater pools there and runs into the garage and into the house, leading to a chronic problem and safety issues. He went on to say to relieve the problem a 12-inch pipe was installed down the lot line into a two-foot wide swale at the end of the driveway. This swale is maintained as lawn. Mr. Dick proposed to relieve the flooding with a vegetated swale, maintained as lawn, traversing the lot. He stated that there is no way to grade into the wetland, as the driveway/garage are the lowest points. Ms. Dyer noted that since the recent paving of Rowley Bridge Road, more water runs into the yard, driveway, and garage. The resident of 233 Rowley Bridge Road confirmed the water issues in the area. The installed berms have redirected the water into many yards. Mr. Dick will stake the site and the TCC will make a site visit. Spillman asked if there would be any increase in concentrated flow onto the abutting property at 244 Rowley Bridge Road. Dick responded that the swale is a recharge feature and that there is no additional impervious cover.

Goldman made a motion to consider a reduction to 1/3 of the existing Town fee because the homeowner did not bring the problem on herself. She is doing this to fix a water problem in her house, noting that he

was not petitioned to make this suggestion. Seconded. MOTION CARRIED unanimously. A check will be prepared to refund 2/3 of the Town Bylaw fee.

Stump a motion to continue the hearing under the Act and the Bylaw to October 10th in order to have a site visit and to receive the DEP comment sheet with file number. Seconded. MOTION CARRIED unanimously.

Amended OoC 307-0575: 53 Main Street, (Map 41, Lot 28), Fotag Qirjazi, LLC/Graham Associates, Inc.

Stump read the Legal Ad. Gerry MacDonald of H.L. Graham Associates, presenting, submitted proof of abutter notification. This is an after-the-fact request for TCC to Amend the OoC to accept a series of minor modifications to the plan that have not and would not increase impacts to the Resource Areas. Gerry Mac Donald explained that the modifications were needed. A stone culvert was very old and considerable amount was under the adjacent woodworking building. The contractor ended up pouring a 60-foot buttress wall to help support the structure and to keep the water in the channel. Thus, the building was moved 2 feet. Parking was pushed into a 7-foot easement strip for vehicle maneuvering, some green spaces were modified and other landscape areas were increased. The reconfiguration of parking resulted in changing the door location and modification to the adjacent landscaping. Plantings still have to be done in the bioretention area, the configuration of which has been changed. The TCC noted that there was an existing building this location; they had no objections to these changes. Stump made a motion to close the hearing under the Act and the Bylaw and to issue an Amended Order accepting the modifications as shown on the plan dated 9/6/07. Seconded. MOTION CARRIED unanimously.

Amended OoC 307-0452: 14 Arrowhead Road, (Map 32, Lot 31), J. Barnes Contracting LLC/Hayes Engineering

Stump read the Legal Ad. Gordie Rogerson, representing, submitted proof of abutter notification. The request is for TCC to Amend the Order of Conditions, accepting a plan showing a septic system for a 4-bedroom house instead of a system for a 3-bedroom house. A copy of the previously approved 3-bedroom plan two years ago was identified by Rogerson and amendments were reviewed – to add a leaching trench outside the Buffer Zone and to reduce the length of the trench. He went on to say that there is less grading on the north side, and the south grading remains the same. The grading of the NW corner was not changed; the same number of elevations were used. The abutters present had concerns about a boulder retaining wall. It was identified that the water runs northerly; the location of the leaching field will not be the abutting properties. Commissioners are concerned that there not be increased runoff onto Arrowhead Road. The debate from 2-3 years ago to approve a four bedroom was referred to and it was thought that the TCC approved a 3-bedroom home. Rogerson stated that work inside the jurisdictional area has been reduced. He believes the revised plan has less impact on the wetlands than the approved 3-bedroom design. He identified that the original house has been demolished and there is a new house plan that can be modified. It was noted that this site did not easily perc. Rogerson stated that no alternate systems have been considered due to cost and, that, depending on the system, trenches are the preferred system by DEP. A site visit will be done individually by the Commissioners. Barnes gave a verbal consent for Commissioners to visit the property at any time. Stump made a motion to continue the Arrowhead Road hearing until the next meeting. October 10, 2007. Seconded. MOTION CARRIED unanimously.

Enforcement Order, Violation Notice & Bylaw Ticket #2007-11: 270 Boston Street, (Map 41, Lot 87) Bear Albright – ratification and discussion

Spillman explained that the Enforcement Order was issued due to extensive clearing of vegetation and removal/movement of soil from Bordering Vegetated Wetland and an Intermittent Stream. Bear Albright introduced himself and discussed his plan. He identified himself to the TCC as a Greenbelt participant who enjoys working the land. He stated that he purchased this 28-acre old estate and, over the past several years, has been cleaning out the area at the back. Eventually he wants to make a farm pond.

He acknowledged the presence of an Intermittent Stream. He has retained Mike DeRosa and will file a NOI.

Quoting from the E.O., there was “extensive clearing of vegetation & removal/movement, of soil from Bordering Vegetated Wetland & Int. Stream, exceeding 28,000 square feet (based on observations at this site visit, previous site visits, and review of previous filings with TCC).” The E.O. states that Albright is required to attend this meeting “to discuss the violations that occurred and actions necessary to prevent further alterations, and necessary restoration measures to restore the functions and values of Resource Areas that have been affected.” The Enforcement Order was ratified at the September 12th meeting. The Bylaw fine (\$6,250.00) has not been paid and no request to appeal the ticket has been submitted by Albright (request must be in writing).

Harmer requested that TCC extend the appeal period for the fine. He would like to see some restoration, perhaps a pond that would be 3-4 feet at the deepest, with some parts that are not deep, creating an adjacent wetland. Woodlands need to be nearby to recreate areas that have been lost; this may have been a vernal pool. Harmer asked Spillman to send Mr. Albright information about vernal pools. Harmer requested at least a preliminary plan by the October 24th meeting.

Mr. Albright was informed to submit a written appeal to include a description of his plan.

Stump made a motion to extend time for consideration of the appeal to October 24, 2007. Seconded.

MOTION CARRIED unanimously.

OLD BUSINESS, UPDATES, & MISCELLANEOUS:

37 River Road, (Map 48, Lot 13)

TCC discussed the letter that was sent to Mr. Aftandilian, who declined to appear before the TCC, saying that the work is exempt as this is an agricultural field. TCC stated that Aftandilian is not exempt from notification. It was noted that he should have submitted documentation to the TCC, for example, a Farm Plan, before he claimed exempt status for the property.

Spillman referred the Commissioners to 310 CMR 10.04 Agriculture, (b) Normal maintenance of land in agricultural use, and (c) Normal improvement of land in agricultural use. Is this land in agricultural use? Are the activities that have taken place maintenance or improvements/enlargement? Spillman identified two concerns – working/altering 300-400 feet of wetland and working within a 100 feet of the River. The TCC had concerns that this land should be seeded immediately. Aftandilian has stated that he is returning the field to haying. TCC discussed the unauthorized alteration of Wetlands Resource Areas and the need for Bylaw fines. They discussed that much more alteration/disturbance of Resource Areas took place than would be reflected in the fines.

Goldman made a motion to issue an Enforcement Order for unauthorized alternation of Wetland Resource Areas and a violation notice with fines for work in Resource Areas of 400 square feet of disturbance. Seconded. MOTION CARRIED unanimously.

Alison Hardy of 39 River Road identified that a trench for draining was dug up to her property line next to an existing trench that was built 50 plus years ago and empties in the River. Her concern is that a pond will be created in her side yard; the TCC will make a site visit to 37 River Road

REQUESTS:

CoC 307-0489: 22 High Ridge Road, (Map 64, Lot 17), Shirley and Brian Parke

Administrator needs to make a site visit. No action taken.

CoC 307-0466: 35 Prospect Street, (Map 40, Lot 4), Marco and Andrea Lara

Site visit needed.

CoC 307-0369: 478 Boston Street, (Map 7, Lot 4), Our Savior Lutheran Church

Administrator needs to make another site visit.

Stump made a motion to continue the three above to October 10, 2007. Seconded. MOTION CARRIED unanimously.

CoC 307-0532: 96 Parsonage Lane, (Map17, Lot 5), Joseph Schraffa, Jr.

Stump made a motion to issue a Certificate of Compliance with Continuing Conditions. Seconded.
MOTION CARRIED unanimously.

120 High Street, (Map 49, Lot 56), Hickory Beech Realty Trust/Joseph Falzone, Trustee –

Planting of native species and control of invasive plants update, final BSC inspection

The site visit with Gillian Davies is rescheduled to October 1 at 9:00 a.m.

120 High Street Open Space Conservation Restriction

Deadline for review this year is October 1st.

Stump made a motion to submit the draft CR to EOEEA (Executive Office of Energy and Environmental Affairs) for review with possible minor amendments. Seconded. MOTION CARRIED unanimously.

Prospect Hill/Gail Street Drainage – discussion

The Highway Department will be asked if catch basin/drainage are being planned for the end of the Gail Street cul-de-sac.

OoCs 307-0529 and 307-0485, 102 River Road, (Map 47, Lot 49) – update

Spillman reported that the house now is vacant, but still standing.

ENFORCEMENT, APPEAL REPORTS, UPDATES:

Enforcement Order, Violation Notice & Bylaw Ticket #2007-08: 244 Rowley Bridge Road, (Map 80, Lot 10) Dominick DeBernardo

DeBernardo has hired Bill Manuell. Twenty-one days has past; no appeal received; Bylaw ticket (\$300) has not been paid.

Violation Notice & Bylaw Ticket #2007-09: 244 Rowley Bridge Road, (Map 80, Lot 10) Stephen DiCicco, DiCicco Landscape & Irrigation

Twenty-one days have past; no appeal received; Bylaw ticket (\$100) has not been paid.

A discussion of understanding followed regarding the update of 244 Rowley Bridge Road.

This will be addressed at the next meeting.

Violation Notice and Bylaw Ticket #2007-10: 249 Rowley Bridge Road, Alfalfa Farms, (Map 80, Lot 2), Carpenter Costin.

Twenty-one days have past; no appeal received; Bylaw ticket (\$100) has not been paid. Pile of soil in wetland and did work that was not approved.

Violation Notice & Ticket #2007-04: 5 Fox Run Road, (Map 47, Lot 28), Jeffrey and Lynn Evalul – update, appeal of fine.

The Administrator will call Mr. Evalul.

Enforcement Order, Violation Notice & Bylaw Ticket #2007-03: 43 Cross Street, (Map 62, Lot 2), Christopher Nash

Ipswich District Court found “probable cause” and “responsible.” Mr. Nash has twenty-one days (from September 18th) to pay the fine. Mr. Nash has not adhered to the Enforcement Order to appear in front of the Commissioners.

3rd Amended Enforcement Order: 64 Wenham Road & 255 High Street, (Map 71, Lot 22 & Map 65, Lot 1), Stephen Bernstein.

This was discussed in Executive Session. Kopelman and Paige represented the Town in a pre-trial conference last week.

Enforcement Order: 50 Prospect Street, (Map 48, Lot 12), John Molloy/Hancock Associates -No update

Amended Enforcement Order, OoC 307-0462, 39 Prospect Street, (Map 40, Lot 97), Eliot Sherr & Mary Ellen Gardiepy.

Spillman stated that she and Harmer met with the Engineer, Dan Ottenheimer, and sales agent, Elizabeth Warren, both representing the new owner. The Engineer will present a plan to bring the property into Compliance.

Amended Enforcement Order, Violation Notice & Ticket #2006-20: 221 Washington Street, (Map 47, Lot 2), Andrzej Galka.

The TCC Office has heard from the District Court.

ADMINISTRATOR'S REPORT:

Statehouse Conservation Commission Day, Wednesday, September 19th - Harmer reviewed the day, saying that he and Spillman talked to four Representatives and various other people.

MACC Fall Conference, Saturday, October 20th. Last day to sign up is October 10, 2007.

OTHER:

The Commissioners discussed a letter from Spillman identifying the need to increase the hours of the Administrator to 40 hours. Spillman told the Commissioners that she needs additional hours to perform her job. Currently Spillman is paid for 37.5 hours.

A lengthy discussion followed. The TCC noted that they are in favor of the recommended increase; the Chair will speak with the Town Administrator before a vote is taken.

10:27 PM – Mr. Goldman made a motion to enter into **Executive Session** for the purpose of discussing ongoing litigation regarding **64 Wenham Road/255 High Street** and to return to open session. Seconded.

The motion was approved by Roll Call Vote:

Harmer	yes
Stump	yes
Olcott	yes
Warren	yes
Goldman	yes
McArdle	yes

At 11:08 p.m. McArdle moved to adjourn. The motion was seconded and passed unanimously.

Respectively submitted,

Catherine Tinsley

These minutes were approved at the TCC meeting on December 12, 2007.